

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-131



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on June 10, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 10, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who retired from active duty as a [REDACTED], asked the Board to remove from his record two Officer Evaluation Report (OERs). The first, OER1, covers his service as the [REDACTED] and other [REDACTED] from April 1, 2013, to March 31, 2014. The second, a special OER (SOER), covers his service in the same position from April 1 to May 20, 2014, and documents his removal from this primary duty.

The applicant alleged that the disputed OERs should be removed because his rating chain¹ failed to follow proper procedures. Regarding OER1, he alleged that his rating chain failed to follow these policies:

- Article 5.A.1.c.(1)(d)[2] of COMDTINST M1000.3A (hereinafter, "the Officer Manual"), regarding use of the Officer Support Form, states that the form is mandatory for ensigns and lieutenants junior grade and strongly encourages rating chains to provide performance feedback during and at the end of each reporting period.

¹ Article 5.A.1.b.(5) of COMDTINST M1000.3A (hereinafter, "the Officer Manual") provides that officers are normally evaluated by a "rating chain" of three superior officers, including a supervisor, who is normally the person to whom the officer reports on a daily or frequent basis; a reporting officer, who is normally the supervisor's supervisor; and a reviewer, who is normally the reporting officer's supervisor.

- Article 5.A.2.c.(2)(f) of the Officer Manual states that commanding officers (COs) must encourage OER supervisors and reporting officers to counsel subordinates by providing performance feedback at the end of each reporting period and by “providing copies of completed OERs to them prior to submission to Commander (CG PSC-OPM-3).”
- Article 5.A.2.d.(2)(b)[6] of the Officer Manual states that the supervisor shall “[c]ounsel the reported-on officer at the end of the reporting period if requested, or when deemed appropriate, regarding observed performance. Discusses duties and responsibilities for the subsequent reporting period and makes suggestions for improvement and development.”
- Article 5.A.2.d.(3)(b)[6] of the Officer Manual states that the reporting officer shall “[p]rovide timely performance feedback to the reported-on officer at the end of each reporting period and at such other times as the reporting officer deems appropriate.”

The applicant alleged that he was unaware of the contents of OER1 until he received the validated copy of it from the Personnel Service Center (PSC) on May 29, 2014. Therefore, the applicant argued, he was denied the performance feedback required by these policies, as well as the opportunity to provide a reply prior to the submission of OER1 to PSC.²

Regarding the SOER, the applicant alleged that his rating chain violated the following policies:

- Article 5.A.7.c.(2)(a) of the Officer Manual states that the reporting officer must provide a copy of an SOER to the reported-on officer and inform the reported-on officer of the option to submit an addendum to the SOER. It also states that the supervisor and reporting officer will have an opportunity to address the addendum in one-page signed endorsements. The SOER with the attached addendum and endorsements is then forwarded to the OER reviewer, who pursuant to Article 5.A.7.c.(2)(c), ensures that the OER is consistent and that the derogatory information is substantiated and may return it to the reporting officer for additional information or clarifying comments.
- Article 1.F.2.d.(1) of COMDTINST M1000.8A, concerning an officer’s removal from primary duties (RPD), states that “[a]t the command’s discretion, an officer may be temporarily removed from primary duties at any time. Upon determining that an officer meets the requirements of Article 1.F.2.b. of this Manual for permanent removal from primary duties, the command will submit an OER in accordance with Articles 5.A.3.c. and 5.A.4.h. of [the Officer Manual]. The command should inform the officer of the RPD process and way forward.”
- OPM-3 Addendum Process Job Aid, dated April 8, 2013, states that it is “an unofficial OPM-3 job aid” created because the procedures for SOERs in Article 5.A.4.h. of the

² Article 5.A.7.e. of the Officer Manual states that within 21 days of receiving a validated OER from PSC, a reported-on officer may submit a reply to the OER. The comments “should be performance-oriented, either addressing performance not contained in the OER or amplifying the reported performance. Restrictions outlined in Article 5.A.7.f. of this Manual apply. Comments pertaining strictly to interpersonal relations or a personal opinion of the abilities or qualities of a rating chain member are not permitted.” The reply is forwarded to PSC through the rating chain, who may endorse it with or without additional comments.

Officer Manual “can be a little confusing.” It recommends that a rating chain complete an SOER and submit it to OPM-3 for review before signing it and, after OPM-3 concurs with the SOER, sign it and give a copy to the reported-on officer, who should have 14 days to submit an addendum. After 14 days have passed, the supervisor has an opportunity to endorse the addendum with or without comments, followed by the reporting officer and the reviewer. Then this “job aid” recommends that the “entire package”—the SOER with the addendum and endorsements—be shown to the applicant, who signs block 1.b. on the SOER to acknowledge having seen it. Then the command forwards the package to Officer Personnel Management (OPM) branch of PSC for validation.

The applicant stated that his reporting officer did not counsel him about preparing an addendum to the SOER or about the “RPD process and way forward.” He noted that he was given the SOER on Monday, June 2, 2014, and submitted his addendum on Friday, June 13, 2014, although the deadline was Monday, June 16, 2014. The applicant also alleged that he was not provided “the entire package” so that he would know exactly what was being submitted to OPM. Therefore, he did not know the full contents of the package until he received the validated copy from PSC on August 5, 2014.

The applicant alleged that the preparation of both disputed OERs shows that “there was a deliberate attempt by the rating chain to subvert the Coast Guard’s approved evaluation process.” The applicant alleged that his rating chain disregarded their responsibility and that their errors adversely affected his military record. Therefore, he argued, both disputed OERs should be removed from his record.

In support of his allegations, the applicant submitted copies of the policies and OPM’s job aid; the email by which PSC forwarded him a copy of the validated OER1 on May 29, 2014; the email by which PSC forwarded him a copy of the validated SOER on August 5, 2014; and the disputed OERs, including his addendum to the SOER and his rating chain’s endorsements to his addendum. As indicated in the Summary of the Record below, the applicant circled and rewrote some of the dates on his rating chain’s endorsements, indicating that he believes that his rating officials did not sign their endorsements to his addendum in order and implying that he was prejudiced by the timing and incorrect order of signature.

SUMMARY OF THE RECORD

The applicant received a Reserve commission as an ensign on [REDACTED]. He served on extended active duty and was promoted to lieutenant junior grade on [REDACTED] and to lieutenant on [REDACTED] at which point he was integrated into the regular Coast Guard. The applicant was promoted to lieutenant commander on [REDACTED], and to commander on [REDACTED].

On July 5, 2012, the applicant reported for duty at the [REDACTED] to serve as the [REDACTED]

[REDACTED] On his first annual OER in this position, dated March 31, 2013, the applicant received

very high marks of 6 and 7 in all of the performance categories (on a scale of 1 to 7). His reporting officer assigned him a comparison scale mark denoting one of the “top 10% of all Commanders” and “one of the few Distinguished performers” and a promotion scale mark of “Definitely Promote.” In addition, his reporting officer wrote that the applicant was “[e]xtremely ready & well-prepared for promotion to O6 as soon as possible.”

The applicant’s second annual OER as [REDACTED] is OER1, the first disputed OER in this case. OER1 is signed by the same reporting officer, who was the applicant’s commanding officer (CO), but by a new supervisor and reviewer. OER1 has mostly marks of 5 and 6 in the performance categories, no marks of 7, and four “standard” marks of 4 in the performance categories “Developing Others,” “Directing Others,” “Workplace Climate,” and “Responsibility.” The applicant’s reporting officer, a captain, assigned him a comparison scale mark denoting a “[s]teady performer; limited potential for increased responsibility” and a promotion scale mark of “Promotion Potential.” The reporting officer included the following comments regarding the applicant’s leadership potential:

Intentional external focus on important mission areas [REDACTED] impacted ability to be most effective in primary role to lead self/staff/program/ext stakeholders. Over relied on skilled staff to execute mission, lacked clear vision for program and developmental process for staff to prepare for future roles. Clearly, consistently & capably demo’d proficiency in both response & prevention fields. Especially skilled in incident mgt & team building w/partners. Major dedication to diversity/inclusion initiatives, valuable operational & leadership experience may prepare him for future service as an O-6 in MSU CO, or Sector Deputy. Two Masters degrees show prepared/ready for Senior Service School.

The applicant received a validated copy of OER1 on May 29, 2014, and did not submit an OER reply.

The disputed SOER, dated May 20, 2014, states that it was “submitted under Article 5.A.3.e(1)(b) due to substandard performance and is a derogatory OER per Article 5.A.7.c.; officer removed from primary duties on 2014/05/20.” The SOER includes substandard performance marks of 3 for the performance categories “Results/Effectiveness,” “Adaptability,” “Developing Others,” “Directing Others,” “Workplace Climate,” and “Judgment.” These six substandard marks and some better marks of 4, 5, and 6 are supported by the following comments:

Well prepared for and staunch oversight of first integrated [REDACTED] managed oversight of many small and large details to execute several events to culminate the programs. Substandard performance in primary role as [REDACTED] Performance has been observed by CO/XO/CMC; identified in locally administered [REDACTED] Climate Survey and follow-on focus groups and through independent interactions with the [REDACTED] staff. Despite several one-on-one meetings with CO/XO/CMC to address deficiencies in visible and intrusive leadership, enabling and sustaining an environment of trust, seeking input from and valuing

staff members, and overall awareness and involvement in the [REDACTED] Program, marked improvement was not observed. On 13 May was made aware of these deficiencies via an internal memo and the specific actions needed to be a visible leader who models the way for the staff and students, and achieves the appropriate balance with competing demands outside of primary role. On 19 May officer submitted Request for Voluntary Retirement and Request for Reassignment. Desired to unencumber the position as officer prepares for and transitions to retirement. Presided over dinner dance and emceed graduation for 300+ guests, demonstrated high level of professionalism in all venues.

Poised emcee for [REDACTED]. Regularly praised staff for accomplishments and dedication to their jobs. Missed opportunities to reinforce staff's ability to identify performance gaps and develop personal strategies to improve themselves and their environment. Misread challenges with personal communication instead of using these as examples for targeted improvement.

With upcoming departure of three key leaders in [REDACTED], [the applicant] did not demonstrate ability to coach, mentor and lead diverse staff as well as develop new [REDACTED] [REDACTED] to be successful in their roles. Struggled to set a personal example of what's expected of others; absent from "mandatory" events that staff was required to attend; did not realize impact of decision to take leave at a critical point in [REDACTED] schedule burdening staff to oversee [REDACTED] [REDACTED] involving visitors from OPM/PSC. Minimized communication breakdown between staff and [REDACTED] leadership; avoided dealing with staff performance problems and concerns. Inconsistent with providing constructive feedback to staff in order to assist with their own professional growth and improve program performance. Unfamiliar with/absent from [REDACTED] daily operations; minimal interaction made [him] seem inattentive to this aspect of the [REDACTED] program. All OERs [for subordinates] of excellent quality and submitted on time.

While demonstrating general effectiveness, [the applicant] seemed distracted by external factors. Unable to appropriately prioritize program oversight and staff's professional needs to ensure best example for [REDACTED]. Struggled to find right balance between image of [REDACTED] success and actually preparing and mentoring junior officers for success in future leadership positions.

Developed [REDACTED] Command Climate Improvement Plan based on results of climate survey; use of poor judgment left void of strategic focus and longer term action plan/POAM. Developing ability to lead at the tactical, operational and strategic level in the manner appropriate to senior leader of high value program. Avoided keeping command advised of progress or challenges in order to truly assess which aspects needed attention and rarely sought help with internal operations. Strong alliance with external partners to sustain viable officer accession plan and optimize role of [REDACTED].

The applicant's reporting officer again assigned him a "steady performer" comparison scale mark and "Promotion Potential" promotion scale mark, supported by the following comments:

Disappointed in [the applicant's] lack of commitment to leadership role and [redacted] program in deciding to request reassignment from primary role. Gaps in own leadership and program oversight were all correctable with willingness to accept feedback and coaching from seniors, subordinates, and peers. Suited for positions of equal responsibility and consistently & capably demo'd proficiency in both response & prevention fields. Especially skilled in incident management and team building with internal and external partners and stakeholders. Valuable operational and leadership experience may prepare him for future service as an O-6 in MSU CO, or Sector Deputy.

The supervisor's and reporting officer's signatures on the SOER are dated June 2, 2014. The supervisor signed it at 12:06 p.m., and the reporting officer signed it a few minutes earlier, at 11:47 a.m. On June 13, 2014, the applicant submitted an addendum to the SOER. He stated that he was surprised and disappointed to receive it when—

my only intent was to retire gracefully after over 21 years of dedicated and honorable service to the Coast Guard. On 19 May, I made the personal decision to submit a voluntary retirement request. In addition, I submitted a reassignment request so that I could adequately prepare for my retirement, however, remain in position long enough for a replacement to be identified and ensure a proper relief. These requests were accepted by the Commanding Officer and agreed to support on two occasions, both 19 May, and again on 20 May 2014. As per Article 1.F.3. of [the Officer Manual], a reassignment, not constituting removal from primary duties, was assumed to have been agreed to. As a result, I can only perceive this derogatory OER, that I received on 2 June 2014, as not only renegeing on our agreement, but punishment for my desire to retire and focus on [text deleted] my [text deleted] well-being. I am confident a resolution can be agreed to that is acceptable for all involved. All that I ask is to be allowed to retire with dignity, my service record and reputation intact.

The rating chain's endorsements all bear the typed date of June 20, 2014, but were electronically signed on different days. The supervisor's endorsement to the addendum bears an electronic signature dated June 23, 2014, at 10:29 a.m., and states the following:

While taking numerous external opportunities to ensure the [redacted] program made the most impact for the Coast Guard, [the applicant] missed an opportunity to turn an adverse, internal leadership situation into a positive one, which the CO, CMC, and I all agreed was completely rectifiable. When the realities of his immediate environment were brought to his attention on different occasions, even though he initially responded with a plan of action, at times he minimized how his actions affected his staff and rarely asked for help to execute his plan. [He] could have and should have used his plan to highlight his own leadership skills, re-energize

his staff, and truly set an example for turning uncertainty into success since his staff was committed to stand by his side. In this case, he chose not to lead.

Additionally, I am disappointed he was convinced he could simply “opt out” of his primary duties by requesting a reassignment to prepare for his own transition to retirement. I do not believe Coast Guard leaders have this luxury. The [REDACTED] [REDACTED] is relied upon to oversee the [REDACTED] program and staff, and make tough decisions to ensure the integrity of the program. It is unfortunate [he] didn’t embrace the chance to do just that.

The reporting officer’s endorsement to the addendum bears an electronic signature dated June 20, 2014 (before the supervisor), and states the following:

On 19 May [the applicant] submitted a Request for Voluntary Retirement and a Request for Reassignment. Although I was surprised at his request for retirement, I was genuinely please that he [deleted word] had made his decision about the future. I was disappointed in his request for reassignment and corresponding decision to focus on his needs rather than the needs of the [REDACTED] program and staff. This is not what I expect of a leader at any level, let alone a senior leader of a prestigious program like [REDACTED]. I understood his request for reassignment as a response to my internal memo to him outlining his deficiencies and the specific actions needed to carry out his primary duties. I believed that the deficiencies in his leadership and program oversight were correctable with willingness to accept feedback and coaching. I shared my belief with him and encouraged him to reach out to myself, the XO, the CMC and other leaders who could help him be a more effective leader. About a week later he requested reassignment at the earliest opportunity to prepare for, and transition to, retirement. Although he offered to prepare his successor to ensure a successful transition, this request showed a clear lack of commitment and devotion to the [REDACTED] staff, the [REDACTED] program and the [REDACTED]. I did not consider Reassignment Not Constituting Removal from Primary Duties ([Officer Manual] Article 1.F.3.a.) at any point because the factors for [the applicant’s] inability to perform his duties were within his control. I made the decision for Removal from Primary Duties and notified him of such the following day, 20 May. During our discussion on 20 May, I agreed with [the applicant] to communicate my decision to the [REDACTED] staff with dignity and in a manner fitting of his 20 years of service. At no time did I agree to not hold him accountable for his actions and decision to request reassignment.

The reviewer’s signature on the SOER is dated June 23, 2014, and his endorsement to the addendum bears an electronic signature of June 23, 2014, at 10:41 a.m. (after both the reporting officer and supervisor). The reviewer forwarded the SOER without comment.

The applicant was transferred to a new unit. He applied to the Personnel Records Review Board (PRRB) to correct or remove the disputed OERs, but his request was denied. He retired on June 1, 2015, with more than 22 years of active duty.

VIEWS OF THE COAST GUARD

On October 19, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board deny relief.

With respect to OER1, regarding the applicant's complaint that he did not receive performance feedback and was not shown OER1 until he received the validated copy, PSC stated that declarations signed by the rating chain (summarized below) show that the applicant received feedback during the reporting period for OER1. PSC also stated that, although the manual encourages rating chains to show an officer his OER before forwarding it to PSC for review, the manual does not require this step. Nor, PSC argued, does the manual require a rating chain to show the officer the "entire package" (SOER with addendum and endorsements) before forwarding it to PSC, although it encourages the rating chain to do so. PSC stated that OPM's job aid, which advises the rating chain to show the officer the "entire package" is unofficial and not a policy manual. PSC stated that OPM provided the applicant's rating chain with advice on the process in a phone call on June 2, 2014, and an email on June 3, 2014.

PSC pointed out that the applicant was properly shown the SOER itself before the SOER was forwarded to the reviewer for review and signature, as the manual requires, because he submitted an addendum to it dated June 13, 2014, before the reviewer signed the SOER and his endorsement to the applicant's addendum on June 23, 2014.

PSC recommended that the Board deny relief because the applicant did not submit "any evidence to show that the disputed OERs in question contain any error." PSC noted that the responsibility for evaluating the applicant rested with his rating chain and argued that there is insufficient evidence to overcome the presumption of regularity accorded the disputed OERs. PSC stated that the applicant's rating chain prepared the OERs in accordance with policy and that they should not be removed from his record.

PSC submitted with its memorandum the following declarations signed by the applicant's rating chain pursuant to his PRRB application:

Declarations of the Applicant's Supervisor

The applicant's supervisor stated in her declaration to the PRRB, dated October 14, 2014, that the applicant's "accusation that he was first made aware of the contents of [OER1] in May 2014 when he received the validated copy from PSC is inaccurate. On or about 24 April 2014 I distinctly remember walking a copy of the OER over to [him] while he was seated in an office adjacent to the [REDACTED]. Due to the nature of the comments, not only did I show him the OER to discuss it, I held a copy of the OER in my hands as he read it so that I would be prepared if he had any questions." She also stated that during the reporting period both she and the reporting officer "made attempts to make [the applicant] aware of his substandard performance." On August 31, 2015, the supervisor signed another declaration affirming the accuracy of her declaration to the PRRB.

Declarations of the Applicant's CO and Reporting Officer

The applicant's CO and reporting officer stated in her declaration to the PRRB, dated October 30, 2014, that "as a matter of routine," she met with the applicant every two weeks to discuss the [REDACTED] program and his professional development and career goals. She provided performance feedback during these meetings. In March 2014, she stated, a member of the [REDACTED] staff brought matters to attention "that highlighted some deficiencies in the [REDACTED] work place climate." She immediately discussed them with the applicant, his supervisor, and the Command Master Chief. Because they wanted more information, the applicant initiated an [REDACTED] workplace climate assessment, followed by focus groups, and developed an improvement plan to address the deficiencies validated in the assessment. She alleged that she "continued to engage [the applicant] regarding the plan, and I engaged the staff and made my own observations on the workplace climate." She alleged that she provided the applicant with "ample performance feedback" during this period.

Regarding the delivery of OER1, the reporting officer stated that she told the applicant's supervisor to give him a copy once it was signed by the rating chain and she remembers the supervisor telling her that the applicant had received a copy.

Regarding the SOER, the reporting officer stated that she consulted OPM while deliberating and executing the applicant's RPD. She relieved him of his duties on May 20, 2014, after he submitted his transfer request; allowed him to take the ten days of leave he had previously requested; and temporarily assigned him to another division while she sought an off-season replacement to lead the [REDACTED]. OPM told her that a "case officer" had been assigned to the applicant "to assist [the applicant] in the RPD process including drafting his comments." After PSC approved the draft SOER, she sought final signatures and told the applicant's supervisor to give him a copy. The reporting officer stated that she "did not engage [the applicant] directly on the [SOER] as I felt our discussion on 15 May, 19 May, and 20 May regarding his performance, request to be reassigned, and relief of primary duties were sufficient. [The supervisor] remained in contact with [the applicant] regarding his OERs, duties and responsibilities and well-being. I chose to err on the side of compassion knowing that our relationship was damaged because of this difficult decision, and did not want to cause additional discomfort for [him], but readily admit I could have engaged him more on the RPD process. Based on my 25 years' experience leading others, I believe I provided ample performance feedback to him during this period."

On September 1, 2015, the reporting officer signed another declaration affirming the accuracy of her declaration to the PRRB.

Declarations of the Reviewer for OER1 and SOER

The OER reviewer stated in his declaration to the PRRB, dated October 15, 2014, that as the reviewer, he ensured that the supervisor and reporting officer consulted PSC and adhered to the applicable regulations. The reviewer stated that he believes that the supervisor and reporting officer provided timely performance feedback to the applicant. The reviewer stated that the applicant's addendum was attached to the SOER when he received the SOER for review. On

August 14, 2015, the reviewer signed another declaration, stating that the first declaration remains accurate.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 3, 2015, the applicant responded to the Coast Guard's advisory opinion. The applicant repeated his allegation that he was unaware of the contents of OER1 until he received the validated copy from PSC on May 29, 2014. He stated that he was not transferred to the office in [REDACTED] until after he submitted his transfer request on May 19, 2015.

The applicant stated that based on his 22 years of experience, while end-of-period OER counseling may not be required, it is "strongly encouraged" and thus expected of all supervisors and "routine throughout the Coast Guard." He stated that he had received OER counseling in 2013 and that his colleagues had received OER counseling. Therefore, "it seems selective and intentional avoidance of OER counseling and review obligations by the [REDACTED] chain of command were applied in my case." The applicant noted that his chain of command was allowed to submit the disputed OERs to PSC without his signature because Coast Guard policy does not require the reported-on officer's signature acknowledging OER counseling for reported-on officers in pay grades O-5 and above.

The applicant also repeated his allegation that his rating chain failed to follow policy with regard to providing him the "entire package" (SOER with his addendum and endorsements) and counseling him about the SOER, his RPD, and "the way forward."

The applicant agreed with PSC's statement that he is not disputing the contents of the disputed OERs or claiming that they contain errors. However, he stated, "both these OERs were improperly administered which is a failure of the rating chain's responsibilities and obligations. It is clear [from] the way both of these OERs were administered, there was a deliberate attempt by the [REDACTED] rating chain to subvert the Coast Guard's approved evaluation process." Finally, the applicant noted that because he has retired and has a civilian position with the Coast Guard, he has "no other motivation for correction of this matter than to know that both these improperly administered OERs were removed from my permanent record."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.³

³ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

3. The applicant alleged that the disputed OERs should be removed from his record because they were erroneously administered and he did not receive performance feedback and OER-specific counseling. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵ To be entitled to relief, the applicant cannot "merely allege or prove that an [OER] seems inaccurate, incomplete or subjective in some sense," but must prove that the disputed OER was adversely affected by a "misstatement of significant hard fact," factors "which had no business being in the rating process," or a prejudicial violation of a statute or regulation.⁶

4. The applicant has not proven by a preponderance of the evidence that OER1 should be removed from his record. Although he alleged that he received insufficient performance feedback at the end of the reporting period and no specific OER counseling, the declaration signed by his CO, who served as his reporting officer, shows that the applicant received ample performance feedback during regular biweekly meetings and during special meetings concerning significant deficiencies in the workplace climate revealed in a climate assessment of the applicant's office in the spring of 2014. Under Articles 5.A.1.c(1)(d)[2] and 5.A.2.c.2.f. of the Officer Manual, rating chains are strongly encouraged but not required to provide officers with OER counseling before submitting an OER to PSC. However, pursuant to Article 5.A.2.d.(1), a reported-on officer's responsibilities include "obtaining sufficient performance feedback" and "[n]otifying the supervisor not later than 21 days before the end of the reporting period if the reported-on officer desires an end-of-period conference." And Article 5.A.2.d.(2)(b)[6] states that the supervisor shall "[c]ounsel the reported-on officer at the end of the reporting period if requested, or when deemed appropriate, regarding observed performance." (Emphasis added.) The applicant was an experienced CDR in 2014, and there is no evidence that he requested and was denied an end-of-period or OER counseling session by his supervisor; nor did he allege that he requested one and was refused. Under Article 5.A.2.d.(3)(b)[6], a reporting officer must "[p]rovide timely performance feedback to the reported-on officer at the end of each reporting period and at such other times as the reporting officer deems appropriate." But given their regular, biweekly meetings and their special meetings regarding the deficiencies in the workplace climate that spring, the Board is not persuaded that the applicant's reporting officer failed to "provide timely performance feedback to the reported-on officer at the end of [the] reporting period," as required by Article 5.A.2.d.(3)(b)[6], even if they did not discuss OER1.

5. The applicant alleged that his rating chain's alleged failure to provide OER-specific counseling regarding OER1 deprived him of the right to provide an OER reply. However, under Article 5.A.7.e. of the Officer Manual, an officer may file an OER reply within 21

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

days after receiving the validated OER from PSC. Therefore, the alleged lack of OER-specific counseling for OER1 did not deprive the applicant of his right to file an OER reply.

6. The applicant has not proven by a preponderance of the evidence that his rating chain violated any specific provision of the Officer Manual in preparing OER1. Even assuming *arguendo* that the applicant was not provided OER-specific counseling for OER1, he has not shown that his rating chain violated a provision of the Officer Manual or that he was harmed by the alleged failure to discuss the OER with him. As noted above, he could have requested such counseling if he wanted it and he could have submitted a reply within 21 days of receiving the OER from PSC, but he did not. Nor has he shown that he was unfairly surprised by OER1, and he is not contesting the marks or comments therein. The Board finds no grounds for removing OER1 from his record.

7. The applicant has not proven by a preponderance of the evidence that the SOER should be removed from his record. Although he alleged that his command failed to counsel him about submitting an addendum, about being removed from his primary duties, and about “the way forward,” as required by Article 5.A.7.c.(2)(a) of the Officer Manual and Article 1.F.2.d.(1) of COMDTINST M1000.8A, the record shows that the applicant did in fact submit an addendum to the OER and that he had already submitted and discussed his transfer request with his reporting officer by the time the SOER was prepared. In addition, after his reporting officer decided to remove him and discussed his RPD with OPM, the applicant was assigned an OPM case officer to assist him in the RPD process and in drafting his addendum to the SOER. The applicant did not allege that he sought a meeting with his command for additional counseling about his RPD and SOER and was denied. Therefore, the Board is not persuaded that the applicant’s command failed to provide him with counseling about the RPD process or “the way forward” or to ensure that he knew that he could file an addendum to the SOER even if the command did so through the OPM case officer. The Board finds that the applicant, a senior officer, has not proven by a preponderance of the evidence that he was denied requested or required counseling about the RPD process, “the way forward,” or about submitting an addendum to the SOER.

8. The applicant has not proven by a preponderance of the evidence that his rating chain violated any policy by failing to show him the entire SOER package before submitting it to PSC—assuming *arguendo* that they did not. The record indicates that the applicant was shown the SOER so that he could draft his addendum to it, but he apparently was not shown his rating chain’s endorsements to his addendum before they were submitted to PSC. No provision of the Officer Manual required the rating chain to show him their endorsements, however, and OPM’s “job aid,” which recommends showing the “entire package” to the reported-on officer, is expressly unofficial. Therefore, the rating chain’s alleged failure to show him the “entire package” does not constitute an error. Nor has the applicant shown that he was harmed by not knowing the content of the endorsements to the addendum before it was validated by PSC. He has not shown that their alleged failure to show him their endorsements to his SOER addendum before the package was sent to PSC caused any error or injustice.

9. The applicant complained about the order of the signatures on the SOER and the endorsements to his addendum. According to the record, the signatures occurred as follows in June 2014:

- June 2, 11:47 a.m.—SOER electronically signed by reporting officer
- June 2, 12:06 p.m.—SOER electronically signed by supervisor
- June 13—Applicant submits addendum
- June 20, 1:51 p.m.—Endorsement of addendum electronically signed by reporting officer
- June 23, 10:29 a.m.—Endorsement of addendum electronically signed by supervisor
- June 23, 10:41 a.m.—Endorsement of addendum electronically signed by reviewer
- June 23—SOER signed by reviewer

Thus, the reporting officer apparently signed the SOER before the supervisor. Although the applicant implied that this order violates policy, it does not. Article 5.A.2.d.(2)(b)[8] of the Officer Manual states that after preparing the supervisor's portion of an OER, the supervisor forwards it to the reporting officer, which suggests that supervisors normally prepare their portion of an OER before reporting officers do so. However, nothing in the Officer Manual requires the supervisor's signature on an OER to predate the reporting officer's signature. Moreover, under Articles 5.A.2.d.(3)(b)(3) and 5.A.2.d.(4)(b)(4), either the reporting officer or the reviewer may return any OER for correction or reconsideration, which could result in a correction and re-signing or delayed signing of an OER.

The electronic signatures also show that the reporting officer signed her endorsement of the applicant's addendum to the SOER before the supervisor signed her own endorsement of the addendum. Although the applicant implied that this order of signature violates policy, it does not. Article 5.A.7.c.(2)(a) states only that "[t]he supervisor and the reporting officer shall be afforded the opportunity to address the reported-on officer's addendum via individual one-page signed endorsements to the reported-on officer's addendum. The reporting officer will then forward the OER and attachments to the reviewer." The reviewer in turn may return the package "for additional information and/or clarifying comments," which could result in a correction and re-signing or delayed signing of an endorsement by the supervisor. Nothing in the Officer Manual requires the supervisor's endorsement of an OER addendum to be signed before the reporting officer's endorsement is signed.

10. The applicant alleged that the preparation of both disputed OERs shows that "there was a deliberate attempt by the rating chain to subvert the Coast Guard's approved evaluation process." However, the Board finds no substantial evidence of any subversion of the evaluation process in the record. The applicant has not shown that his rating chain violated any provision of the Officer Manual in preparing the disputed OERs or deprived him of due process. Even assuming *arguendo* that the alleged violations actually constituted violations of policy (which they do not), he has not shown that he was harmed by the alleged violations. He was not deprived of his right to submit an OER reply to OER1 or an addendum to the SOER. He has neither alleged nor proven that either disputed OER contains an erroneous mark or comment. He discussed his transfer request with his reporting officer and received counseling about the RPD process from an OPM case officer. And he has neither alleged nor proven that his command ever denied him counseling that he requested.

11. As noted above, to be entitled to the removal of an OER, an applicant must overcome a presumption of regularity and prove by a preponderance of the evidence that the disputed

OER was adversely affected by a “misstatement of significant hard fact,” factors “which had no business being in the rating process,” or a prejudicial violation of a statute or regulation.⁷ The applicant has not overcome this presumption or met his burden of proof for either OER1 or the SOER. Accordingly, his request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Hary v. United States*, 618 F.2d 704, 708 (Ct. Cl. 1980), cited in *Lindsay v. United States*, 295 F.3d 1252, 1259 (Fed. Cir. 2002).

ORDER

The application of [REDACTED], USCG (Retired), for correction of his military record is denied.

June 10, 2016

